

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA )  
 )  
V. ) No. 3:08-CR-143  
 ) Varlan/Inman  
DONALD RAY REYNOLDS, JR. )

**REPORT AND RECOMMENDATION**

Mr. Reynolds has filed *pro se* “Motion for Pauper Status,” in which he recites that he is “In need for court to appoint counsel on appeal.” (Doc. 227). This motion has been referred to the magistrate judge by order of the district judge. It is noted that the order of reference directs the magistrate judge to consider only whether Mr. Reynolds should be allowed to appeal *in forma pauperis*.<sup>1</sup> Since the motion is for post-trial relief, it will be addressed by a report and recommendation, 28 U.S.C. § 636(b)(1)(B).

On March 11, 2009, Magistrate Judge Guyton found Mr. Reynolds to be indigent and appointed attorney John Eldridge of the CJA Panel to represent him; *see*, Document 42. Later, attorney Eldridge was allowed to withdraw and defendant began representing himself at that point; *see*, Document 101.

In August 2009, attorneys Harrison and Schwartz entered their appearance on behalf of this defendant, Documents 124 and 131. Attorneys Harrison and Schwartz represented

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<sup>1</sup>Since judgment has been entered (Doc. 221), and a Notice of Appeal filed (Doc. 223), jurisdiction has passed to the Court of Appeals, which includes authority to appoint counsel.

the defendant to the conclusion of the trial. The magistrate judge was told at some point that Messrs. Harrison and Schwartz were retained by family members of Mr. Reynolds, which eliminated what otherwise would have been a conflict between their retention as defendant's attorney and his prior affidavit of indigency upon which Judge Guyton relied.

After receipt of Judge Varlan's order of reference, this magistrate judge requested that a Probation Officer visit Mr. Reynolds and obtain from him a new Affidavit of Indigency to confirm that he indeed is indigent at this time. The Probation Officer procured that affidavit, a copy of which has been sent to the magistrate judge. The Probation Officer was directed to present the original affidavit to the Clerk for filing, under seal.

The United States Attorneys Office advises that it has no objection to defendant's request to proceed *in forma pauperis*.<sup>2</sup>

Based upon that Affidavit of Indigency, the court finds that the defendant is indigent and unable to pay fees and costs, or give security with regard to his appeal. Therefore, he should be allowed to proceed *in forma pauperis*.

Respectfully submitted,

s/ Dennis H. Inman  
United States Magistrate Judge

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<sup>2</sup>Doc. 232.